

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAY 31 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2007-0022-PR
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
MICHAEL L. HARRELL,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200500012

Honorable Thomas E. Collins, Judge

REVIEW GRANTED; RELIEF DENIED

Michael Harrell

Tucson
In Propria Persona

V Á S Q U E Z, Judge.

¶1 After pleading guilty, petitioner Michael Harrell was convicted of two counts of aggravated assault with a deadly weapon and one count of being a prohibited possessor of a handgun. At sentencing, the trial court identified aggravating and mitigating circumstances and sentenced Harrell to concurrent, aggravated prison terms of fourteen years

for the aggravated assault convictions, to be followed by an aggravated term of three years for the prohibited possessor conviction.

¶2 Harrell filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. In his post-conviction petition, Harrell argued that his aggravated sentences constitute cruel and unusual punishment and that the trial court failed to properly balance aggravating and mitigating factors. The trial court denied relief, finding “the aggravating and mitigating factors were appropriately considered.” In his petition for review, Harrell contends that when he committed the assaults by threatening police officers with a firearm after he had been stopped for a minor traffic infraction, he was attempting to commit police-assisted suicide. He argues that this circumstance should have been given greater weight and that, because his true intent was to harm himself and not the police officers, he should not have been sentenced to aggravated terms.

¶3 We review a trial court’s ruling on an application for post-conviction relief only for an abuse of the court’s discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). The weight to be accorded evidence presented in mitigation is within the sound discretion of the sentencing judge. *See State v. Towery*, 186 Ariz. 168, 189, 920 P.2d 290, 311 (1996). And, when a trial court has fully considered the relevant sentencing factors presented and the sentence imposed is within statutory limits, as Harrell’s are, we do not generally find an abuse of discretion. *See State v. Webb*, 164 Ariz. 348, 355, 793 P.2d 105, 112 (App. 1990); *see also State v. Patton*, 120 Ariz. 386, 388, 586 P.2d 635, 637

(1978) (sentencing judge is, “in most instances, more able than ourselves to evaluate the defendant and his circumstances”). We cannot say the court abused its discretion in this case.

¶4 After conducting a hearing on aggravating and mitigating circumstances, the trial court told Harrell:

I want to be very clear . . . that I believe there is a substantial amount of mitigation here, based on the testimony of [a psychiatrist]. And I noted his testimony of what he characterized as a chronic, smoldering depression. I’m willing to accept that . . . at least sometime during the sequence of events there was a suicide attempt. There was an element of impulsiveness.

But the court also identified aggravating circumstances, including Harrell’s prior felony conviction entered within the past ten years, the physical and emotional harm suffered by the victims, and Harrell’s having been on release for another charge of being a prohibited possessor when he committed the offenses.

¶5 Harrell has not sustained his burden of establishing the trial court abused its discretion in denying post-conviction relief. Accordingly, although we grant the petition for review, we deny relief.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Presiding Judge